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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA

7 In re

Case No. 07-10582-A-7

DC No. UST-1

8 ANDRE VENTURA and
9 MARY JOSEPHINE CASEY,

10 Debtors.

11 FINDINGS OF FACT AND CONCLUSIONS OF LAW
12 RE MOTION OF UNITED STATES TRUSTEE TO ENLARGE
13 TIME TO FILE MOTION FOR DISMISSAL AND/OR
14 COMPLAINT TO DENY DISCHARGE

15 A hearing was held July 5, 2007, on the motion of the United States Trustee to enlarge
16 time to file motion to dismiss the case or to file a complaint to deny discharge. This
17 memorandum contains findings of fact and conclusions of law required by Federal Rule of
18 Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as
19 defined in 28 U.S.C. §157(b)(2)(A) and (J).

20 Andre Ventura and Mary Josephine Casey filed their chapter 7 bankruptcy case on
21 February 28, 2007. The deadline to file a complaint objecting to discharge of the debtor under
22 Bankruptcy Code § 727 or to file a motion to dismiss the case pursuant to Bankruptcy Code §
23 707(b) was June 4, 2007. The United States Trustee timely filed a motion to enlarge the time to
24 move for dismissal and/or to file a complaint objecting to discharge. Federal Rule of Bankruptcy
25 Procedure 4004(b). The notice of hearing provided that opposition to the motion should be in
26 writing and filed and served not less than 14 calendar days preceding the date of the hearing.
27 Thus, the motion was brought under Local Bankruptcy Rule 9014-1(f)(1). No timely written
28 opposition to the motion was filed. However, no separate proof of service of the motion was
timely filed. Therefore, the court determined to deny the motion without prejudice. In response,

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1 on July 3, 2007, the United States Trustee caused to be filed a supplemental declaration of
2 Gregory S. Powell stating that the certificate of service had been completed on June 4 and that
3 the motion had been served on June 4. Inadvertently, no certificate of service had been filed.
4 Also on July 3, the United States Trustee filed the certificate of service in which Joan Caskey of
5 the United States Trustee's Office stated under penalty of perjury that she had served the debtors
6 and their attorney on June 4, 2007.

7 Therefore, the court took the matter up at the July 5, 2007 hearing. At that hearing, the
8 United States Trustee argued that the motion should be granted for the reasons set forth in the
9 moving papers. The debtors' attorney argued that the motion should not be granted because the
10 United States Trustee's mistake in not complying with the Local Rules by timely filing its proof
11 of service should not be overlooked. The court took the matter under submission.

12 The United States Trustee requests an extension of time because this case was selected
13 for audit on March 26, 2007. As of June 4, 2007, the debtors had provided some but not all of
14 the documents and information requested by the audit. Therefore, the United States Trustee was
15 unable to determine as of June 4, 2007 whether grounds existed to file a motion to dismiss under
16 § 707(b) or to object to the debtors' discharge pursuant to § 727.

17 The debtors' only opposition to the motion was that the United States Trustee had failed
18 to comply with the local rules by not filing a certificate of service timely.

19 It is appropriate to extend the time to file a motion under § 707(b) or to file a complaint
20 to deny discharge under § 727 of the Bankruptcy Code if there is cause to extend the time and if
21 the moving party has not been dilatory. Here, the United States Trustee has shown cause to
22 extend the time in that, as of June 4, 2007, the debtors had not provided all the documents and
23 information requested by the debtor audit. While the United States Trustee certainly erred in
24 failing to comply with the Local Rules by timely filing a proof of service, that error was rectified.
25 In fact, it inured to the benefit of the debtors by allowing their counsel to argue, even though no
26 timely written opposition to the motion had been filed.

27 Balancing the equities here, cause exists to extend the time as requested by the United
28 States Trustee. Therefore, a separate order will issue extending the time for the United States

1 Trustee to file a motion to dismiss under § 707(b) or to file a complaint to deny discharge under
2 § 727 to September 14, 2007.

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5 DATED: September 4, 2007.

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WHITNEY RIMEL, Judge
United States Bankruptcy Court

PROOF OF SERVICE BY MAIL


STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within above-entitled action; my business address is 2656 U.S. Courthouse, 1130 O Street, Fresno, California, 93721. On September 4, 2007, I served the within document on the interested parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Fresno, California, addressed as follows:

Layne Hayden, Esq.
3585 W. Beechwood Ave., #107
Fresno, CA 93711

Gregory S. Powell, Esq.
Office of the United States Trustee
2500 Tulare St., #1401
Fresno, CA 93721

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.
Executed on September 4, 2007, at Fresno, California.


Kathy Torres, PLS